

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Minnesota Democratic-Farmer-Laborer  
Party,

Complainant,

vs.

Representative Ernie Leidiger and Steven  
Nielsen, Treasurer, Citizens for Ernie  
Leidiger,

Respondents.

**ORDER ON MOTIONS  
FOR SUMMARY DISPOSITION AND  
MOTION TO DISMISS**

The above-entitled matter came before the panel of Administrative Law Judges on the Complainant's Motion for Summary Disposition and the Respondents' Motion to Dismiss. Following a prehearing conference and pursuant to the Presiding Administrative Law Judge's First Prehearing Order in this matter, the parties filed their Motions on April 18, 2012, and filed their Responses to the Motions on April 30, 2012. The record on the Motions closed on that date.

David Zoll, Attorney at Law, Lockridge Grindal Nauen, PLLP, represented the Minnesota Democratic-Farmer-Laborer Party (Complainant or MN DFL).

Representative Ernie Leidiger and Steven Nielsen (Respondents) represented themselves without counsel.

Based upon all of the files, records, and proceedings herein, and for the reasons set out in the attached Memorandum, the assigned Panel of Administrative Law Judges makes the following:

**ORDER**

**IT IS ORDERED:**

1. That Complainant's Motion for Summary Disposition is **GRANTED**.
2. That the Respondents' Motion to Dismiss is **DENIED**.

3. That, based on their violation of Minn. Stat. § 211B.12, Respondents Leidiger and Nielsen shall pay a civil penalty in the total amount of \$500 by August 15, 2012.<sup>1</sup>

Dated: May 14, 2012

/s/ Richard C. Luis  
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RICHARD C. LUIS  
Presiding Administrative Law Judge

/s/ Barbara L. Neilson  
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BARBARA L. NEILSON  
Administrative Law Judge

/s/ Miriam P. Rykken  
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MIRIAM P. RYKKEN  
Administrative Law Judge

### **NOTICE**

Under Minn. Stat. § 211B.36, subd. 5, this Order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § § 14.63 to 14.69.

### **MEMORANDUM**

In March 2011, Representative Ernie Leidiger received a speeding ticket while returning home from a late session at the Legislature.<sup>2</sup> On June 24, 2011, Representative Leidiger paid the \$178 fine relating to the speeding ticket with funds from his principal campaign committee. His campaign's treasurer, Steve Nielsen, reported the expense as a noncampaign disbursement for "transportation" on the Citizens for Leidiger 2011 year-end campaign finance

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<sup>1</sup> The check should be made payable to "Treasurer, State of Minnesota" and sent to the Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 55164-0620.

<sup>2</sup> Representative Leidiger lives 49 miles from the State Capitol, in the city of Mayer, located in Carver County. He represents Minnesota House District 34A, which at the time included portions of Carver and Scott Counties.

report filed with the Campaign Finance and Public Disclosure Board (Campaign Board).<sup>3</sup>

The Complainant filed this Complaint on March 1, 2012, alleging that the Respondents violated Minn. Stat. § 211B.12 of the Fair Campaign Practices Act by paying the speeding ticket with campaign funds. Presiding Administrative Law Judge Richard C. Luis reviewed the Complaint and attachments and, by Order dated March 2, 2012, determined it set forth a *prima facie* violation of Minn. Stat. § 211B.12.

On March 2, 2012, a separate complaint was filed with the Campaign Board alleging that Representative Leidiger and Mr. Nielsen violated provisions of Chapter 10A by inaccurately reporting the \$178 payment for the speeding ticket as a noncampaign disbursement for “transportation.” On April 3, 2012, the Campaign Board issued an order finding probable cause to believe that the Citizens for Leidiger 2011 year-end report improperly reported the \$178 payment as a noncampaign disbursement and that Mr. Nielsen certified the year-end report knowing that it omitted required information. The Campaign Board stated, however, that the Leidiger campaign committee had amended the report and reclassified the transaction as a campaign expenditure and that, as a result, no violation with respect to the report remained.<sup>4</sup> The Board ordered Mr. Nielsen to pay a civil penalty of \$300 for knowingly certifying as true a report that omitted required information.

On April 4, 2012, Presiding Administrative Law Judge Richard Luis held a telephone prehearing conference on this Complaint. After some discussion and testimony, the parties agreed that this matter was appropriate for Summary Disposition or Dismissal based on the record. The Parties were ordered to file their Motions by April 18, 2012, and to file any Responses to the Motions by April 30, 2012. The Parties were also directed to specifically address in their filings whether the \$178 payment for the speeding ticket was a permitted expenditure under Minn. Stat. § 211B.12.

### **Applicable Law**

Minnesota Statutes § 211B.12 governs campaign expenditures. The statute provides as follows:

Use of money collected for political purposes is prohibited unless the use is reasonably related to the conduct of election campaigns, or is a noncampaign disbursement as defined in section 10A.01, subdivision 26. The following are permitted expenditures when made for political purposes:

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<sup>3</sup> Complaint Ex. B.

<sup>4</sup> In a March 19, 2012, letter to the Campaign Board, Respondent Nielsen denied that the Citizens for Ernie Leidiger campaign committee had reclassified the payment as a campaign expenditure.

- (1) salaries, wages, and fees;
- (2) communications, mailing, transportation, and travel;
- (3) campaign advertising;
- (4) printing;
- (5) office and other space and necessary equipment, furnishings, and incidental supplies;
- (6) charitable contributions of not more than \$50 to any charity annually; and
- (7) other expenses, not included in clauses (1) to (6), that are reasonably related to the conduct of election campaigns. In addition, expenditures made for the purpose of providing information to constituents, whether or not related to the conduct of an election, are permitted expenses. Money collected for political purposes and assets of a political committee or political fund may not be converted to personal use.

Thus, under Minn. Stat. § 211B.12, candidates may only use campaign funds for expenditures that are reasonably related to the conduct of an election campaign or for permissible “noncampaign disbursements,” and candidates must not convert campaign funds to personal uses.

Minnesota Statutes § 10A.01, subd. 26, defines “noncampaign disbursements” to include, among other things, payments by a campaign committee for accounting and legal services, food, beverages and entertainment for fundraising events, and payments for the candidate’s “expenses for serving in public office, other than for personal uses.”

The issue before the Panel is whether the payment of Representative Leidiger’s \$178 fine for a speeding ticket is a permissible use of campaign funds under Minn. Stat. § 211B.12. If the payment of the speeding ticket fine is not a “noncampaign disbursement” (as an expense for serving in public office),<sup>5</sup> the payment is permissible only to the extent that it is reasonably related to the conduct of a campaign or fits within one of the seven categories of permissible expenditures identified in Section 211B.12.

### **Arguments of the Parties**

In its Complaint, the MN DFL argues that paying a fine relating to a candidate’s speeding violation is not included within the scope of authorized noncampaign disbursements and is not an authorized expenditure for a political purpose. The Complainant points out that the Campaign Board has stated in advisory opinions that permitted noncampaign expenses for serving in public office are limited to the ordinary and reasonable costs associated with activities

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<sup>5</sup> Minn. Stat. § 10A.01, subd. 26(10).

expected or required of public officials.<sup>6</sup> The Complainant asserts that that a speeding ticket is neither an expected or required expense for serving in public office and cannot be considered a permitted noncampaign disbursement.

The Respondents concede that the payment of the \$178 fine for Representative Leidiger's speeding ticket was not a campaign expenditure, as it was not related to the conduct of a campaign. They insist, however, that the payment was a permissible noncampaign disbursement. Respondents argue that because Representative Leidiger received the speeding ticket while he was "in the line of duty" returning to his home in Carver County from a late session at the State Capitol, the fine should be considered payment of "the candidate's expenses for serving in public office, other than for personal uses," which is included in the definition of a noncampaign disbursement.<sup>7</sup> According to the Respondents, the "transportation event" (presumably Representative Leidiger's commute from the State Capital to his home) would never have occurred had Representative Leidiger not been driving home "to take care of personal hygiene and rest" after a late session at the Capital. The Respondents state that:

the ticket was received during this transportation event, and it was reported as a cost of the transportation event and subsequently paid for by the campaign using guidance provided by the Campaign Finance and Public Disclosure Board.

The Respondents attached an informational sheet provided by the Campaign Board that includes in the list of permitted noncampaign disbursements identified in statute, "payment of fines assessed by the Board." The Respondents assert that the speeding ticket fine should be viewed both as a reasonable expense of serving in public office and similar to a fine assessed by the Campaign Board. In addition, the Respondents contend that since Representative Leidiger is the largest contributor to his own campaign, the \$178 disbursement could be viewed as a payment made with his own funds.

Finally, the Respondents characterize the MN DFL's actions in filing this Complaint with the Office of Administrative Hearings as "frivolous" given that the Campaign Board is "in existence to handle such questions" and the Board issued its own ruling on the matter on April 3, 2012. The Respondents argue that the Complaint should be dismissed as meritless and suggest that the Panel order the MN DFL to pay a \$300 penalty to the Campaign Board in lieu of Mr. Nielsen's payment, as well as pay \$178 to Representative Leidiger to reimburse him the amount he refunded to his campaign committee.

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<sup>6</sup> See, e.g., Advisory Opinions 314 (costs of civil litigation unrelated to candidate's election or campaign committee not permitted noncampaign disbursement), 378 (mileage reimbursement for intern who provided constituent services for legislator may be classified as noncampaign disbursement), and 411 (cost of home health care for close relative when public official is traveling not permitted noncampaign disbursement).

<sup>7</sup> Minn. Stat. § 10A.01, subd. 26(10).

## Motion Standard

As an initial matter, the Panel finds that Respondents' motion, although labeled a motion to dismiss, is more appropriately treated as one for summary disposition. When matters outside the pleadings are presented for consideration, the motion must be reviewed under a summary judgment standard.<sup>8</sup> In this case, the Respondents attached exhibits to their motion papers. Accordingly, the Panel will review this matter as cross motions for summary disposition.

Summary disposition is the administrative equivalent of summary judgment. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law.<sup>9</sup> The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.<sup>10</sup> A genuine issue is one that is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.<sup>11</sup>

The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact. To successfully resist a motion for summary judgment, the non-moving party must show that there are specific facts in dispute which have a bearing on the outcome of the case.<sup>12</sup> The nonmoving party must establish the existence of a genuine issue of material fact by substantial evidence; general averments are not enough to meet the nonmoving party's burden under Minn. R. Civ. P. 56.05.<sup>13</sup> The evidence presented to defeat a summary judgment motion, however, need not be in a form that would be admissible at trial.<sup>14</sup>

When considering a motion for summary judgment, the Court must view the facts in the light most favorable to the non-moving party.<sup>15</sup> All doubts and

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<sup>8</sup> *Witzman v. Lehrman, Lehrman & Flom*, 601 N.W.2d 179, 184-85 (Minn. 1999); *Cummings v. Koehnen*, 556 N.W.2d 586, 588 (Minn. App. 1996); Minn. R. Civ. P. 12 and 56. (Respondents attached a letter from Mr. Nielsen to the Campaign Board dated March 19, 2012, and a list of permissible noncampaign disbursements and definitions provided to candidates by the Campaign Board.)

<sup>9</sup> *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); Minn. R. 1400.5500K; Minn. R. Civ. P. 56.03.

<sup>10</sup> See Minn. R. 1400.6600.

<sup>11</sup> *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804, 808 (Minn. App. 1984).

<sup>12</sup> *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Hunt v. IBM Mid-America Employees Federal*, 384 N.W.2d 853, 855 (Minn. 1986).

<sup>13</sup> *Id.*; *Murphy v. Country House, Inc.*, 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (Minn. 1976); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 75 (Minn. App. 1988).

<sup>14</sup> *Carlisle*, 437 N.W.2d at 715 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)).

<sup>15</sup> *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. App. 1984).

factual inferences must be resolved against the moving party.<sup>16</sup> If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.<sup>17</sup>

## Analysis

The Panel agrees with the Parties that there are no genuine issues of material fact that will require an evidentiary hearing, and that this proceeding can be adjudicated by applying the law to the undisputed facts.

The ultimate question before the Panel is whether the Respondents violated Minn. Stat. § 211B.12 when they used campaign funds to pay the \$178 fine associated with Representative Leidiger's speeding ticket.

The Panel concludes, in accordance with the Order of the Campaign Finance and Disclosure Board,<sup>18</sup> that the payment of the \$178 fine is not a permissible noncampaign disbursement as it cannot be considered an "expense for serving in public office." While the Panel understands that Representative Leidiger was returning home from a late session at the Capitol when he received the speeding ticket, nothing in his position as a State Representative required him to break the law by exceeding the speed limit. The fine associated with the speeding ticket, therefore, cannot be considered an ordinary and reasonable cost associated with activities required of him as a public official.

The Panel also rejects Respondents' position that the speeding ticket fine is analogous to a "fine assessed by the Board," which the Campaign Board allows as a noncampaign disbursement. The payment of fines assessed by the Board is not identified as a permitted category of expenditures in the statutory definition of noncampaign disbursements and, in any event, Representative Leidiger's speeding ticket fine is not similar to a fine assessed by the Campaign Board. In addition, the Panel is not persuaded by Respondents' argument that since Representative Leidiger is the largest contributor to his own campaign, the payment may be considered a payment made with his own funds. Once Representative Leidiger contributed his funds to his campaign committee, they became funds collected for a political purpose and may only be used in a manner consistent with Minn. Stat. § 211B.12.

Finally, Respondents misunderstand the respective roles of the Campaign Finance and Public Disclosure Board and the Office of Administrative Hearings. The Board has jurisdiction over complaints alleging violations of Minnesota

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<sup>16</sup> See, e.g., *Celotex*, 477 U.S. at 325; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971); *Thompson v. Campbell*, 845 F. Supp. 665, 672 (D. Minn. 1994).

<sup>17</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986).

<sup>18</sup> *In the Matter of the Complaint of Steven Timmer Regarding Representative Ernie Leidiger and Steven Nielsen*, Campaign Finance and Public Disclosure Board Findings and Order (April 3, 2012)

Statutes Chapter 10A, which governs the campaign finance and public disclosure requirements for candidates seeking nomination or election as a state constitutional officer, legislator or judge.<sup>19</sup> The Office of Administrative Hearings, on the other hand, has jurisdiction over complaints arising under Chapter 211B, the Fair Campaign Practices Act. Whether use of campaign funds to pay a speeding ticket fine is permissible under Section 211B.12 is a matter for the OAH.

The Panel concludes that the Complainant has established that Respondents violated Minn. Stat. § 211B.12 when they used campaign funds to pay Representative Leidiger's \$178 speeding ticket fine. The payment was not reasonably related to the conduct of an election campaign and was not a permissible noncampaign disbursement.

Having found the Respondents violated Minn. Stat. § 211B.12(7), the Panel may make one of several dispositions: the Panel may issue a reprimand, impose a civil penalty of up to \$5,000, and or refer the Complaint to the appropriate county attorney for criminal prosecution.

The Panel imposes a civil penalty of \$500. The violation was deliberate in nature and ill-advised, but had little or no impact on voters.

**B.L.N., R.C.L., M.P.R.**

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<sup>19</sup> Minn. Stat. § 10A.01, subd. 10.